

From: [Marusak, Kirk](#)
To: [Kevin Geraci](#); [Greg Hanna](#)
Subject: RE: FOIA Request EPA-2023-001405 - Confidential Business Information (CBI) - Class Determination 1-95 - Please Read - Thank You
Date: Wednesday, March 8, 2023 1:26:00 PM

Dear Mr. Geraci:

I want to acknowledge your CBI claim, which was made as a representative of Toeroek Associates, on the main Table of Contents contained in your company's winning proposal. Our Agency will be contacting you regarding your claim. Thank you.

Sincerely,

Kirk R. Marusak

Government Information Specialist (FOIA)

Office of Acquisition Solutions

U.S. Environmental Protection Agency

Phone: (202) 564-4493

Fax: (202) 564-2553

Marusak.Kirk@epa.gov

From: Kevin Geraci <kgeraci@toeroek.com>
Sent: Tuesday, March 7, 2023 1:59 PM
To: Marusak, Kirk <Marusak.Kirk@epa.gov>; Greg Hanna <ghanna@toeroek.com>
Subject: RE: FOIA Request EPA-2023-001405 - Confidential Business Information (CBI) - Class Determination 1-95 - Please Read - Thank You

Mr. Marusak,

Yes, as a representative of Toeroek Associates, I am asserting a CBI claim on the main table of contents of our winning proposal.

Thank you,

[Kevin Geraci](#)

Toeroek Associates, Inc.

(720) 626-4439

From: Marusak, Kirk <Marusak.Kirk@epa.gov>
Sent: Tuesday, March 7, 2023 11:23 AM

To: Kevin Geraci <kgeraci@toeroek.com>; Greg Hanna <GHanna@toeroek.com>

Subject: RE: FOIA Request EPA-2023-001405 - Confidential Business Information (CBI) - Class Determination 1-95 - Please Read - Thank You

You don't often get email from marusak.kirk@epa.gov. [Learn why this is important](#)

[Notice: External Email]

Dear Mr. Garachi:

I emailed Mr. Hanna my proposed pages and redactions within those pages a second time. Those pages reflected most of his requested changes listed below. I redacted the maps and removed the Table of Contents for the Quality Management Plan and the Conflict of Interest Plan. However, I did not redact the main Table of Contents as Mr. Hanna requested. As a representative of Toeroek Associates, are you asserting a confidential business information (CBI) claim on the main table of contents of the winning proposal on behalf of your company? I need your response by emailing me at Marusak.Kirk@epa.gov. Thank you.

Sincerely,

Kirk R. Marusak

Government Information Specialist (FOIA)

Office of Acquisition Solutions

U.S. Environmental Protection Agency

Phone: (202) 564-4493

Fax: (202) 564-2553

Marusak.Kirk@epa.gov

From: Kevin Geraci <kgeraci@toeroek.com>

Sent: Tuesday, March 7, 2023 12:08 PM

To: Marusak, Kirk <Marusak.Kirk@epa.gov>; Greg Hanna <ghanna@toeroek.com>

Subject: RE: FOIA Request EPA-2023-001405 - Confidential Business Information (CBI) - Class Determination 1-95 - Please Read - Thank You

Mr. Marusak,

Greg is out of the office today.

In response to your email, we assert the tables of contents and the portion of the proposal covers

that show the map of our team's office locations are CBI and therefore should be redacted. The rationale behind our CBI claims is provided below.

1. The front cover of each volume includes a map of Zone 2 showing locations of our team's facilities and staff. This is not public information, and it reveals a significant feature of our competitive advantage—our excellent geographic coverage of Zone 2.
2. Table of Contents in Volume I and the TOC for our Quality Plan and our OCI Plan. We spend hours on each proposal carefully evaluating the instructions and designing a responsive technical/management volume. The TOC provides the structure AND emphasis of our response (page count provides valuable intelligence on how to weight each factor). We consider this to be CBI, and disclosure provides competitors with an immediate advantage as they can use our winning approach to design their own approach.
3. Our QMP and OCI plans have been refined over the past 20 years to meet evolving EPA requirements, and they reflect our approach and capability for addressing these important issues. These are scored elements in the proposal submittal, and we consider our TOCs to be CBI. Disclosing these TOCs to a competitor without a plan or with a less developed plan gives them the equivalent of direct financial assistance, in that they don't have to work to develop their plans in the way that Toeroek did.

Thank you,

Kevin Geraci

Toeroek Associates, Inc.

(720) 626-4439

From: Marusak, Kirk <Marusak.Kirk@epa.gov>

Sent: Tuesday, March 7, 2023 8:27 AM

To: Greg Hanna <GHanna@toeroek.com>

Cc: Kevin Geraci <kgeraci@toeroek.com>

Subject: FOIA Request EPA-2023-001405 - Confidential Business Information (CBI) - Class Determination 1-95 - Please Read - Thank You

[Notice: External Email]

Dear Mr. Hanna:

When I originally sent you what I proposed to release from your winning proposal that resulted in the award of Contract 68HERH19D0021, I did not mention the reason why I selected certain portions in the two documents. Three Office of Acquisition Solutions (OAS) attorneys from EPA Headquarters, Cincinnati, and Research Triangle Park (RTP) decided in 1995 that 6 items could be released from contractor winning proposals to FOIA requesters that would not substantially harm their

company. Our EPA acquisition office would get FOIA requests asking for a copy of winning proposals on a regular basis. Rather than withhold an entire winning proposal, the 3 OAS lawyers decided that they had to release some parts to satisfy FOIA requesters. Thus, title pages, cover letters, tables of contents, representations and certifications, signed solicitation and solicitation amendments, and past government contracts were decided to be the only portions of a winning proposals that could be released to FOIA requesters. These three individuals produced Class Determination 1-95 to give guidance to FOIA personnel in acquisition on what they could release from a winning proposal.

On March 2, 2023, I sent an email message asking you to confirm that you are asserting a confidential business information (CBI) claim on the main table of contents of your winning proposal. The deadline is close of business (COB) today (3/07/23). Only you and your company can make the decision about whether or not to assert a CBI claim. Please let me know your answer by COB today. Thank you.

Sincerely,

Kirk R. Marusak

Government Information Specialist (FOIA)

Office of Acquisition Solutions

U.S. Environmental Protection Agency

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Fax: (202) 564-2553

Marusak.Kirk@epa.gov